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Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

SUSAN MORRIS, on behalf of herself) Case No.:
and all others similarly situated, and)
on behalf of the general public,)

Plaintiffs,)

CLASS ACTION

v.)

ANTHEM INC., a Indiana)
corporation, BLUE CROSS OF)
CALIFORNIA, dba ANTHEM BLUE)
CROSS, a California corporation; and)
DOES 1 through 10, inclusive,)

Defendants.)

(1) VIOLATION OF CALIFORNIA
UNFAIR COMPETITION LAW

(2) VIOLATION OF CALIFORNIA
DATA BREACH ACT

(3) BREACH OF CONTRACT

(4) BREACH OF COVENANT OF
GOOD FAITH AND FAIR
DEALING

(5) MONEY HAD AND
RECEIVED

DEMAND FOR JURY TRIAL

1
2 Plaintiff SUSIE MORRIS, an individual, on behalf of herself and on behalf
3 of all others similarly situated (“Plaintiff”), hereby alleges as follows:

4 **INTRODUCTION**

5 1. Defendants ANTHEM INC, and BLUE CROSS OF CALIFORNIA,
6 dba ANTHEM BLUE CROSS, a subsidiary of Anthem Inc. (“Anthem” or
7 “Defendant”) is one of the largest health insurers in the United States. This case is
8 brought as a result of Anthem’s failure to properly secure and protect its users’
9 sensitive personally identifiable information (“PII”), including names, birth dates,
10 Social Security numbers, addresses, phone numbers, email addresses and member
11 IDs.

12 2. On or about February 2015, Anthem formally announced a security
13 breach. Anthem’s breach could be one of the largest affecting health care
14 providers. In fact, Anthem boasts of more than 37.5 million subscribers for its
15 health plans, and more than 68 million people are served by its affiliated companies
16 under the brands Blue Cross and Blue Shield, Empire Blue Cross, Amerigroup,
17 Caremore, Unicare, Healthlink and DeCare. The massive breach should not have
18 come as a surprise to Anthem because its shoddy security protocols and track
19 record made it susceptible to the massive hack that resulted.

20 3. Plaintiff and the Class she seeks to represent have been damaged by
21 Anthem’s conduct in that they paid more than they would have had they known
22 how the company would fail to properly secure and misuse their personal
23 information. Additionally, Plaintiffs and the Class have been damaged because
24 they purchased and used products and services of a quality different than they were
25 promised and which they contracted for.

26 4. Plaintiff therefore brings this action on behalf of a proposed class of
27 Anthem customers whose personal information was compromised as a result of the
28 data breach that occurred sometime from December 10, 2014 to February 4, 2015.

1 a. This Court also has original jurisdiction over Class Members’
2 state law claims pursuant to the Class Action Fairness Act of 2005. 28 U.S.C. §
3 1367. At least one of the parties from each side is from different states (minimal
4 diversity) and the amount in controversy is well over \$5,000,000.00.

5 b. Venue is proper in this judicial District because a substantial
6 part of the events and omissions giving rise to the claims occurred in this District.
7 Venue is also proper in this District because there is personal jurisdiction over
8 Defendant, and a substantial number of unnamed class members reside in this
9 District and California. Presently and at all times, Defendant has conducted
10 substantial, continuous and systematic commercial activities in this District.

11 **COMMON ALLEGATION**

12 13. Defendant confirmed that the information of millions of its customers
13 has been hit by a massive data breach attack.

14 14. Defendant established a website. On it, Defendant confirms that
15 information has been compromised and that the Defendant is “working around the
16 clock to determine how many people have been impacted.” www.anthemfacts.com.

17 15. Defendant also confirmed to various media outlets that the unlawful
18 access to customer information was noticed as early as January 27, 2015 and may
19 go back to December 10, 2014. Two days later, an internal investigation verified
20 that the company was the victim of a cyber attack.

21 16. The FBI was contacted as confirmed to various newspapers.

22 17. The breach involves the theft of information stored on various
23 computers and data storage devices, and involves “tens of millions” of records.

24 18. Anthem has almost 80 million customers, which it sometimes calls
25 members.

26 19. The type of data stolen would allow thieves to apply for credit cards,
27 home loans, car loans, gas cards, open a stock brokerage account, penetrate existing
28 accounts at financial institutions, and otherwise cause mischief. It appears that

1 Anthem's security system did not involve encrypting Social Security numbers and
2 birth dates – two of the most valuable pieces of information that a thief can have.

3 **Prior Actions**

4 20. Anthem has been on notice of its security problems. In 2012, Anthem
5 Blue Cross settled a lawsuit brought by then California Attorney General Kamala
6 Harris over a security breach of some 33,000 customers when it sent letters to them
7 with their Social Security numbers clearly visible through a transparent window on
8 the envelopes. Then in 2013, Anthem again exposed its customers Social Security
9 numbers in a document posted to its own web site. Worse still, the company agreed
10 to pay \$1.7 million to resolve federal allegations that it exposed health information
11 of 612,402 people because of another security weakness. Federal officials noted
12 that Anthem had what it deemed as “inadequate safeguards” in an online
13 application database and left birth names, Social Security numbers and health data
14 accessible to unauthorized people. Undeterred -- and apparently unmotivated -- by
15 these events, Anthem still has failed to adequately protected its customers' private
16 and sensitive information.

17 21. Plaintiff and the Class had a reasonable expectation that their PII
18 would remain private and confidential, and she did not expect that her PII would be
19 hacked in the manner it was. Plaintiff believes that a portion of the money she paid
20 for the products at Anthem was to provide for adequate security to protect her
21 personal information. As a result of Anthem's practices, Plaintiff and the Class she
22 seeks to represent, have been damaged and have lost money or property as a result
23 of Anthem's misrepresentations, concealments, and non-disclosure of its poor,
24 substandard security practices, because they purchased products and services of a
25 quality different than they were promised and contracted for, and paid a premium,
26 for what they believed was a safe purchase, that they otherwise would not have
27 paid.

CLASS ACTION ALLEGATIONS

22. Plaintiff brings this action on behalf of herself and all others similarly situated. This suit is properly maintainable as a class action pursuant to F.R.Civ.P. 23(a) and (b)(1), (b)(2) and/or (b)(3). Plaintiff seeks to represent a Class (the “Class”) composed of and defined as follows:

All individuals and entities in the United States whose personal information was compromised as a result of the data breach that occurred somewhere between December 10, 2014 and February 4, 2015.

23. Plaintiff reserves the right to amend or modify the class description with greater specificity or further division into subclasses or limitation to particular issues.

24. This action has been brought and may properly be maintained as a class action under the provisions of F.R.Civ.P. 23 because there is a well-defined community of interest in the litigation and the proposed Class is easily ascertainable.

A. Numerosity

25. The potential members of the proposed Class as defined are so numerous that joinder of all the members of the proposed Class is impracticable. While the precise number of proposed Class Members has not been determined at this time, Plaintiff is informed and believes that the proposed Class encompasses approximately 40 million members.

26. Plaintiff alleges Defendant’s records will provide information as to the number and location of all proposed class members. Joinder of all members of the proposed Class is not practicable.

1 **B. Commonality**

2 27. There are questions of law and fact common to the proposed Class that
3 predominate over any questions affecting only individual class members. These
4 common questions of law and fact include, without limitation:

- 5 a. Whether Defendant failed to protect its customers' PII with
6 industry-standard protocols and technology;
- 7 b. Whether Defendant's practices are false, misleading, or
8 reasonably likely to deceive;
- 9 c. Whether Defendant failed to disclose material facts relating to
10 the character and quality of its securities practices;
- 11 d. Whether Defendant's conduct was reckless;
- 12 e. Whether California law applies to the proposed Class;
- 13 f. Whether Defendant's conduct constitutes a breach of contract;
- 14 g. Whether Defendant's conduct was negligent and/or grossly
15 negligent;
- 16 h. Whether Defendant's violated the California Data Breach Act,
17 Cal. Civ. Code § 1798.80, *et seq.* as alleged;
- 18 i. Whether Defendant engaged in unlawful, unfair, or fraudulent
19 business practices in violation of California's Business and
20 Professions Code § 17200, *et seq.* as alleged;
- 21 j. Whether Plaintiff and other Class members are entitled to
22 equitable relief, including, but not limited to preliminary and/or
23 permanent injunction.

24 **C. Typicality**

25 28. The claims of the named Plaintiff are typical of the claims of the
26 proposed Class. Plaintiff and all members of the proposed Class sustained injuries
27 and damages arising out of Defendant's common course of conduct.
28

1 **D. Adequacy of Representation**

2 29. Plaintiff will fairly and adequately represent and protect the interests
3 of the members of the proposed Class. Counsel is competent and experienced in
4 class action litigation.

5 **E. Superiority of Class Action**

6 30. A class action is superior to other available means for the fair and
7 efficient adjudication of this controversy. Individual joinder of all proposed Class
8 Members is not practicable, and questions of law and fact common to the proposed
9 Class predominate over any questions affecting only individual members of the
10 proposed Class. Each member of the proposed Class has been damages and is
11 entitled to recover by reason of Defendant's illegal policies and/or practices.

12 31. Class action treatment will allow those similarly situated persons to
13 litigate their claims in the manner that is most efficient and economical for the
14 parties and the judicial system. Plaintiff is unaware of any difficulties that are
15 likely to preclude the efficient management of this case as a class action.

16
17 **FIRST CAUSE OF ACTION**

18 **(For unlawful, unfair, and fraudulent business practices under**
19 **California Business and Professions Code § 17200, *et seq.*)**

20 32. Plaintiff incorporates all prior paragraphs as though fully set forth
21 herein.

22 33. Defendant's acts and practices constitute unlawful, unfair, and /or
23 fraudulent business practices, in violation of the Unfair Competition Law, Cal. Bus.
24 & Prof. Code § 17200, *et seq.*

25 34. Defendant's conduct constitutes fraudulent practices in that they are
26 likely to deceive a reasonable consumer.

27 35. Defendant's acts and practices constitute unlawful practices in that
28 they violate the California Data Breach Act, Cal. Civ. Code § 1798.80, *et seq.*

1 Defendant's unlawful practices also violate California's Online Privacy Protection
2 Act, Cal. Bus. & Prof. Code § 22576, which prohibits any company whose website
3 or online service that collects personal identifiable information from California
4 consumers from "knowingly and willfully" or "negligently and materially"
5 breaching its own posed privacy policy.

6 36. Defendant's acts and practices constitute unlawful practices in that
7 they constitute a systematic breach of contract.

8 37. Defendant engaged in unfair business practices by, among other
9 things:

- 10 a. Engaging in conduct where the utility of the conduct is
11 outweighed by the gravity of the consequences to Plaintiff and
12 the other members of the Class;
- 13 b. Engaging in conduct that is immoral, unethical, oppressive,
14 unscrupulous, or substantially injurious to Plaintiff and the other
15 member so the Class; and
- 16 c. Engaging in conduct that undermines or violates the stated
17 policies underlying the California's Online Privacy Act and the
18 California Data Breach Act, which seek to protect consumers
19 and their PII.

20 38. As a direct and proximate result of Defendant's unlawful, unfair and
21 fraudulent business practices, Plaintiff and the Class have suffered injury in fact
22 and lost money or property, in that they purchased retail health products they
23 otherwise would not have purchased and paid more these products and serviced
24 than they otherwise paid.

25 39. Plaintiff and the members of the Class are entitled to equitable relief,
26 including restitutionary disgorgement of all profits accruing to Anthem because of
27 its unlawful, unfair and fraudulent, and deceptive practices, attorney's fees and
28 costs, declaratory relief, and a permanent injunction enjoining Anthem from its

1 unlawful, unfair, fraudulent and deceitful activity.

2 **SECOND CAUSE OF ACTION**

3 **(Violation of the California Data Breach Act, Cal. Civ. Code § 1780, *et seq.*)**

4 40. Plaintiff incorporates all prior paragraphs as though fully set forth
5 herein.

6 41. The data breach constituted a “breach of the security system” of
7 Anthem pursuant to Cal. Civ. Code § 1798.82(g).

8 42. Defendant negligently and recklessly failed to provide reasonable and
9 adequate security measures. Defendant also unreasonably delayed informing the
10 Plaintiff and member of the Class about the security breach of Class members’
11 confidential and non-public information after Anthem knew the data breach had
12 occurred.

13 43. As a result of Anthem’s conduct Plaintiff and the Class incurred
14 economic damages related to the expenses for credit monitoring and the loss
15 associate with paying supra-competitive prices for products that they believed were
16 purchased through secure transactions. They would not have paid such inflated
17 priced had they known that their PII would be compromised.

18 44. Plaintiff, individually and on behalf of the Class, seeks all remedies
19 available under Cal. Civ. Code § 1798.84, including: (a) damages suffered by the
20 member of the Class; (b) statutory damages; and (c) equitable relief.

21 45. Plaintiff, individually and on behalf of the Class, also seeks reasonable
22 attorney’s fees and costs under Cal. Civ. Code § 1798.84(g).

23 **THIRD CAUSE OF ACTION**

24 **(For Breach of Contract)**

25 46. Plaintiff incorporates all prior paragraphs as though fully set forth
26 herein.

27 47. Plaintiff and the Class relied upon Defendant’s representations
28 regarding privacy and data security before purchasing retail health products and

1 services.

2 48. Defendant imposed upon itself an obligation to use reasonable and
3 industry-standard security practices and procedures to protect Plaintiff's and Class
4 members' data and personal information.

5 49. Plaintiff and the Class performed their obligations.

6 50. Plaintiff and the Class paid for, but never received, the valuable
7 security protections to which they were entitled. Part of the price of the products
8 and services was security and data protection.

9 51. Accordingly, Plaintiff, on behalf of herself and the other Class
10 members, seek and order declaring that Anthem's conduct constitutes a breach of
11 contract, and an award of damages in an amount equal to the difference in the free-
12 market value of the secure services and/or products paid for and the insecure
13 services and/or products they received and for all other damages proximately
14 caused thereby.

15 **FORTH CAUSE OF ACTION**

16 **(For Breach of Covenant of Good Faith and Fair Dealing)**

17 52. Plaintiff incorporates all prior paragraphs as though fully set forth
18 herein.

19 53. The law implies a covenant of good faith and fair dealing in every
20 contract.

21 54. Plaintiff and the Class members contracted with Anthem by accepting
22 Anthem's offers and paying for products and/or services.

23 55. Plaintiff and the Class performed all of the significant duties under
24 their agreements with Anthem.

25 56. The conditions required for Anthem's performance under the contract
26 has occurred.

27 57. Anthem did not provide and/or unfairly interfered with and/or
28 frustrated the right of Plaintiff and the Class to receive the full benefits under their

1 agreement.

2 58. Anthem breach the covenant of good faith and fair dealing implied in
3 its contracts with Plaintiff and the Class by failing to use and provide reasonable
4 and industry-leading security practices.

5 59. Plaintiff and the Class were damaged by Anthem's breach in that they
6 paid for, but never received, the valuable security protections to which they were
7 entitled, and which would have made their products and services more valuable.

8 **FIFTH CAUSE OF ACTION**

9 **(For Money Had and Received)**

10 60. Plaintiff incorporates all prior paragraphs as though fully set forth
11 herein.

12 61. Anthem misrepresented its security practices and procedures to
13 Plaintiff and the Class.

14 62. Anthem received money belonging to Plaintiff and the Class when it
15 sold them products and/or services with substandard security.

16 63. Anthem benefited from the receipt of money and retained it.

17 64. Anthem received money under circumstances that in equity and good
18 conscience it would not be able to retain.

19 65. As a result of Anthem's misconduct, Plaintiff and the Class have been
20 harmed and are entitled to relief. Anthem is obligated to make restitution for its
21 customers' purchases of products and/or services.

22
23 Wherefore, Plaintiff and the Class she seeks to represent requests relief as
24 described below:

25 **PRAYER FOR RELIEF**

26 WHEREFORE, Plaintiff prays for the following relief:

- 27 a. An order certifying this matter as a class action;
28 b. An order naming counsel herein as Class counsel;

- c. Consequential damages or statutory damages;
- d. For an order declaring that Anthem's acts and practices constitute a breach of contract;
- e. For an order enjoining Anthem from continuing to engage in unlawful business practices as alleged herein;
- f. Economic damages;
- g. Non-economic damages;
- h. Costs of suit incurred herein;
- i. Any and all prejudgment interest permitted by law;
- j. Reasonable attorney fees and costs of suit, including expert witness fees;
- k. Restitution; and
- l. For such further relief the Court deems proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial of her claims by jury to the extent authorized by law.

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2 Dated: February 5, 2015
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Respectfully Submitted,

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